Opinion issued September 30, 2010

In The
Court of Appeals
For The
First District of Texas

NO. 01-09-00110-CR

NINA MARIE SINGLETON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause No. 1081882

MEMORANDUM OPINION

Appellant, Nina Marie Singleton, appeals her conviction for the murder of Donnie Davis, her fiancé. *See* TEX. PENAL CODE ANN. § 19.02 (Vernon 2003). A jury found her guilty and assessed punishment at 35 years in prison.

Background

Betty Gray lived in an apartment in the same complex as appellant. Around noon on August 24, 2006, Gray heard appellant state loudly that she was going to kill the complainant when he got home because he was cheating on her.

Later that day, Brandon Brooks was standing in the parking lot of the apartment complex when appellant called him to her apartment. When he got to the apartment, he saw the complainant slumped over on the couch and bleeding. The complainant was still alive and mumbling. Brooks also saw appellant holding two knives in her hand and one knife was bloody. He testified that when he tried to call 911 using his cell phone, she snatched the phone and said, "I'm going to lose my apartment." While Brooks tried to help the complainant out to the porch, appellant was not helping the complainant but was instead moving around inside the house. Brooks saw appellant toss the knife somewhere outside the apartment. Later that night, he retrieved the knife from the bushes by holding it with a shirt and gave it to someone to give to a police officer. Another neighbor tried to help the complainant by calling 911 and following the operator's instructions. During that time, appellant was inside the apartment scrubbing the floor.

When the police officers arrived, appellant walked away from her apartment. She gave them a false last name and false date of birth. She told an officer she had

a bruise on her wrist and an injury on her head, but he did not see anything. Appellant claimed she received the injuries from fighting the complainant. An officer did notice a red mark on appellant's wrist and, pursuant to department policy, he called an ambulance to examine her. Because there was an overturned lamp and end table with a broken leg in the living room, a police officer's report contains notations that there were possible signs of a struggle in the apartment that appellant and complainant shared.

The medical examiner testified that complainant's cause of death was homicide caused by a serrated knife that entered his heart. There were no bruises or scratches on his hands or palms and he had no other injuries. He had a blood alcohol level of 0.20 and cocaine metabolite in his system at the time of his death.

Appellant did not introduce any evidence in the guilt-innocence phase of trial. Appellant requested a "self-defense" charge, which the trial court denied. During the sentencing phase of trial, appellant testified that she stabbed appellant after he struck her in the face, came towards her in a threatening manner, and threatened to kill her. The jury found against appellant on the punishment special issue concerning "sudden passion."

Refusal of Deadly Force Instruction

In her sole point of error on appeal, appellant contends the trial court erred in refusing to submit an instruction to the jury on self defense by means of deadly force. In her brief, appellant asserts that she was entitled to the defensive instruction because the complainant was a 227-pound man with no apparent physical limitations, was intoxicated at a level approaching 3 times the legal limit for alcohol, and had cocaine in his system. She contends that she needed to defend herself against his hands, which were deadly weapons, as evidenced by the physical marks on her body that she received from the complainant that required her to go to the hospital. She points out that she stabbed the complainant only once while she was inside an apartment that was upstairs.

A defendant is justified in using deadly force against another, if a reasonable person in the actor's situation would not have retreated, and when and to the degree he reasonably believes the deadly force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly force. TEX. PENAL CODE ANN. § 9.32 (Vernon 2003). A defendant "is justified in defending against danger as he reasonably apprehends it" as viewed in light of the evidence of the overt acts and words by the complainant, and there is no additional requirement that the jury find that the complainant was actually using or attempting to use unlawful

deadly force against appellant. *Guilbeau v. State*, 193 S.W.3d 156, 160 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd); *see Semaire v. State*, 612 S.W.2d 528, 530 (Tex. Crim. App. 1980); *Lavern v. State*, 48 S.W.3d 356, 361 (Tex. App.—Houston [14 Dist.] 2001, pet. ref'd); *Halbert v. State*, 881 S.W.2d 121, 125 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd).

Viewing the evidence in a light favorable to appellant, there is no evidence that appellant reasonably believed that the complainant would cause appellant serious bodily injury. The evidence shows that the complainant may have used non-deadly force against appellant by causing a red mark to her wrist and struggling with her. Although she presented evidence that hands can be deadly weapons depending on how they are used, appellant did not testify or present any evidence that, as used by the complainant, his hands were deadly weapons. *Cf. Semaire*, 612 S.W.2d at 530 (holding error not to instruct on deadly force in self-defense when evidence showed complainant threatened to shoot through door if he did not leave her door; Semaire busted door open and stumbled into apartment; Semaire thought she was going to shoot him when he saw her raise her hands; and there was fact question whether Semaire provoked complainant's attempted use of force); *Guilbeau*, 193 S.W.3d at 160–61 (holding trial court erred by failing to instruct on deadly force in self-defense when evidence showed complainant threatened to give

Guilbeau "the beating of a lifetime," Guilbeau felt shooting "was the only thing [he] could do at that time to save [himself]," and there was not enough time to retreat because complainant came at him "fast").

In other cases where we have reversed for failure to give the deadly force instruction, there was evidence that the appellant feared for his life and that the complainant was threatening to kill the appellant. *See Halbert*, 881 S.W.2d at 127 (holding trial court erred by failing to instruct on self-defense with deadly force when evidence showed complainant physically assaulted Halbert in past, Halbert feared for her life, complainant weighed more than Halbert, and complainant came towards Halbert while threatening to kill Halbert). That evidence is absent here. Appellant did not testify at the guilt stage of trial, and no evidence was admitted to show that she feared for her life or that she reasonably believed appellant would use deadly force against her.

We hold that the trial court properly refused to charge the jury on the law concerning deadly force in defense of one's person because appellant presented no evidence to establish the defense.

Conclusion

We affirm the judgment of the trial court.

Elsa Alcala
Justice

Panel consists of Justices Jennings, Alcala, and Sharp.

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